

***Konstantine J. Diamond***

4010 East 26th Street  
Los Angeles, California 90023  
TELEFAX TRANSMITTAL  
Fax No: 323-269-8506, Phone No: 323-262-5145

TO: Group Director of Group 3700

FROM: Konstantine Diamond

COMPANY: U.S. Patent & Trademark Office

FAX NUMBER: (703)872-9306

DATE: August 27, 2003

NUMBER OF PAGES (including cover): 6

\*\*\*\*\*MESSAGE\*\*\*\*\*

Re: 09/977,636

Dear Director:

Attached please find the following:

1. Petition for Withdrawal of Holding of Abandonment.

Thank you,



Konstantine Diamond

**OFFICIAL**

**FAX RECEIVED**

**AUG 28 2003**

**GROUP 3700**

Attorney Docket No.: RPC 0554 PUS  
Serial No.: 09/977,636

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant: William Apps et al.

Group Art Unit: 3727

Serial No.: 09/977,636

Examiner: S. Castellano

Filed: October 15, 2001

Title: Nestable Bottle Crate

Attorney Docket No: RPC 0554 PUS

#11/dpm  
10-7-03  
Ret re  
Aband.

**U R G E N T**

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT**

Applicant hereby petitions for a withdrawal of the attached Notice of Abandonment (Exhibit A) mailed August 12, 2003. The Notice of Abandonment indicates:

<i>August 16, 2002</i>	<i>Office Action was mailed</i>
<i>February 16, 2003</i>	<i>Expiration of the Period for Reply (with three month extension)</i>
<i>February 19, 2003</i>	<i>Reply to the Office Action (date on the Certificate of Mailing)</i>
<i>August 12, 2003</i>	<i>Notice of Abandonment Mailed</i>

February 16, 2003 was a Sunday, February 17 was a holiday (President's Day) and the PTO was closed on February 18 (see attached notice, Exhibit B). Therefore, the Reply to the Office Action mailed February 19, 2003 was timely filed and this Application should not have been abandoned.

On August 14, 2003, the undersigned spoke to the Examiner who signed the Notice of Abandonment. The Examiner acknowledged that Feb. 17 was a holiday and Feb. 18 was a snow day, but that he abandoned the application because he believed a petition might be required. The Examiner said that he would investigate whether he could withdraw the Notice of Abandonment without a petition, but as of this date the undersigned has not received a response.

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this Petition and attachments are being sent facsimile to (703) 872-9306 on August 27, 2003.

  
Konstantine J. Diamond

Attorney Docket No.: RPC 0554 PLUS  
Serial No.: 09/977,636

This Application sat for ALMOST SIX (6) MONTHS between the timely filing of the Reply and the mailing of the Notice of Abandonment. Therefore, Applicant also requests that the period of the delay between the Reply and the (anticipated) Withdrawal of the Notice of Abandonment be applied in a Patent Term Extension or Adjustment.

No fee is believed to be due for this Petition because of PTO error. However, if a Petition fee is deemed to be due, any such fees should be charged to Deposit Account No. 50-1984.

Respectfully submitted,



Konstantine J. Diamond  
Registration No. 39,657  
4010 East 26<sup>th</sup> Street  
Los Angeles, California 90023  
Telephone: (323) 262-5145  
Facsimile: (323) 269-8506

Dated: August 27, 2003

**OFFICIAL**  
**FAX RECEIVED**  
AUG 28 2003  
**GROUP 3700**

LA 111011 H

09/977,636



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,636	10/15/2001	William P. Apps	RPC 0554 PUS	4010

33171 7590 08/12/2003  
KONSTANTINE J. DIAMOND  
4010 E. 26TH STREET  
LOS ANGELES, CA 90023

REHRIG PACIFIC COMPANY

AUG 14 2003

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Pg 3

**Notice of Abandonment**

Application No.

09/977,636

Examiner

Stephen J. Castellano

Applicant(s)

APPS ET AL.

Art Unit

3727

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 8/16/02.
  - (a) ☒ A reply was received on 04 March 2003 (with a Certificate of Mailing or Transmission dated 19 February 2003), which is after the expiration of the period for reply (including a total extension of time of 3 month(s)) which expired on 16 February 2003.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

**OFFICIAL  
FAX RECEIVED**

AUG 28 2003

**GROUP 3700**

*S. Castellano*  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Pg 4

Closing of USPTO on Tues., Feb. 18, 2003 - OG Date: 25 March 2003

Page 1 of 1

Exhibit B  
09/977,636**United States Patent and Trademark Office OG Notices: 25 March 2003**

Closing of the United States Patent and Trademark Office on  
Tuesday, February 18, 2003

In view of the official closing of the Federal Government offices in the Washington, D.C. metropolitan area, including the United States Patent and Trademark Office, on Tuesday, February 18, 2003, the United States Patent and Trademark Office will consider February 18, 2003, a "Federal holiday within the District of Columbia" under 35 U.S.C. 21 and 37 C.F.R. 1.6, 1.7 and 1.9. Any action or fee due on February 18, 2003, will be considered as timely for the purposes of, e.g., 35 U.S.C. 119, 120, 133 and 151, if the action is taken, or the fee paid, on the next succeeding business day on which the United States Patent and Trademark Office was open, that is, Wednesday, February 19, 2003.

37 C.F.R. 1.6(a)(2) and (4) provide that correspondence deposited as Express Mail in accordance with 37 C.F.R. 1.10, and trademark-related correspondence transmitted electronically, will be considered filed on the date of deposit with the United States Postal Service, or the date the United States Patent and Trademark Office receives the electronic transmission, respectively. Thus, any paper or fee properly deposited as Express Mail on Tuesday, February 18, 2003, in accordance with 37 C.F.R. 1.10 (that is, shown by a "date-in" of Tuesday, February 18, 2003, on the Express Mail mailing label), or trademark-related correspondence transmitted electronically on Tuesday, February 18, 2003, will be considered filed on its respective date of deposit in Express Mail, or receipt of the electronic transmission.

February 24, 2003

JAMES E. ROGAN  
Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office

Pg 5